

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

GUADALUPE PINALES

V.

COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION

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CASE NO. 4:18CV478
(Judge Mazzant/Judge Nowak)

**MEMORANDUM REJECTING IN PART REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On August 23, 2019, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that the decision of the Administrative Law Judge be affirmed.

The Court, having made a *de novo* review of the objections raised by Plaintiff, and noting that the Commissioner did file a response to Plaintiff's objections, finds as follows:

Plaintiff's objection is that the Magistrate Judge erred in concluding the ALJ did not fail to incorporate residual functional capacity limitations related to Plaintiff's severe impairments found by the ALJ at step two. The Magistrate Judge noted that the ALJ found that Plaintiff had severe impairments including bilateral carpal tunnel syndrome, migraine headaches, and a depressive disorder. Plaintiff objects that no limitations were included in the residual functional capacity for these severe impairments. An impairment that is found to be severe, by its own definition, significantly limits an individual's ability to perform basic work activities. Thus, the Court finds that this error is not harmless and that substantial evidence does not support the ALJ decision and the case should be remanded for further consideration. Since the ALJ did not include these limitations

or explain why these limitations were not included in Plaintiff's residual functional capacity, the case must be remanded for further consideration and clarification. *See Martinez v. Astrue*, No. 2:10-cv102, 2011 WL 4128837, at *7 (N.D. Tex. 2011) Plaintiff's objection should be sustained.

For the reasons set forth herein, the Court hereby rejects in part the findings and conclusions of the Magistrate Judge, as the findings and conclusions of this Court. It is therefore

ORDERED that the case is **REMANDED** for further review pursuant to sentence four.

IT IS SO ORDERED.

SIGNED this 27th day of September, 2019.

A handwritten signature in black ink, reading "Amos Mazzant", is written over a horizontal line.

AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE